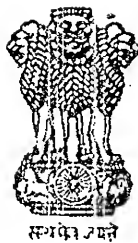


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GOVERNMENT GAZETTE

BOLETIM OFICIAL

GOVERNMENT OF GOA, DAMAN
AND DIU

Secretariat

Notification

GAD-EST-7664

On deputation from the Government of Maharashtra Shri S. N. Sapre, is appointed as Director of Animal Husbandry and Veterinary Services, with effect from the forenoon of 5-11-65 until further orders.

By order and in the name of the Administrator of the Union Territory of Goa, Damam and Diu.

M. C. Sharma
Chief Secretary

Panjim, 6th November, 1965.

ORDER

PDD/PWD/238/65

The Lieutenant Governor is pleased to accord sanction to the creation of a post of Superintending Engineer in the Public Works Department in the scale of Rs. 700-40-1100-50/2-1250 plus a special pay of Rs. 100/- p.m. for a period of one year in the first instance with effect from 26-2-65.

Shri Vinayak M. Bhobe, Deputy Director of PWD at present officiating as Additional Director of PWD is hereby appointed to the post of Superintending Engineer so created.

The existing post of Additional Director of PWD is held in abeyance until further orders.

The expenditure is debitable to the Head 50 Public Works E. Establishment E 1(1) Pay of Officers.

This issues with the concurrence of Finance Department.

S. P. Balasubramanian, Development Commissioner.

Panjim, 23rd September, 1965.

ORDER

GAD-EST-8865

During the absence of the official translator on training, the following persons are appointed to substitute them.

GOVERNO DE GOA, DAMÃO
E DIO

Secretaria

Portaria

GAD-EST-7664

Tendo sido destacado do Estado de Maharashtra, o Sr. S. N. Sapre, é nomeado director dos Serviços de Pecuária e Veterinária, com efeito a partir de 5 de Novembro de 1965 (antes do meio dia) até ordens ulteriores.

Por ordem e em nome do Administrador do território da União de Goa, Damão e Dio.

M. C. Sharma
Secretário-Chefe

Panjim, 6 de Novembro de 1965.

Portaria

PDD/PWD/238/65

O Governador-tenente autoriza a criação de um lugar de engenheiro Superintendente dos Serviços das Obras Públicas, na escala de vencimento de Rps. 700-40-1100-50/2-1250, acrescido do abono especial de Rps. 100/- por mês, por período de um ano, inicialmente, com efeito a partir de 26 de Fevereiro de 1965.

O Sr. Vinayak M. Bhobe, director adjunto dos Serviços das Obras Públicas, ora exercendo as funções de director adicional dos mesmos Serviços, é nomeado para o lugar de engenheiro superintendente acima referido.

O existente cargo de director adicional dos Serviços das Obras Públicas é suspenso temporariamente, até ordens ulteriores.

O respectivo encargo será satisfeito pela verba «50 Public Works E. Establishment E 1(1) Pay of Officers».

A presente portaria é expedida com a aprovação do Departamento das Finanças.

S. P. Balasubramanian, Comissário de Fomento.

Panjim, 23 de Setembro de 1965.

Portaria

GAD-EST-8865

Durante o impedimento dos tradutores oficiais, que estão sujeitando-se a um treino, são nomeados os seguintes indivíduos para os substituir.

1) Shri Gajanana Gantcar, Historical Archleves, Panjim to substitute Shri Gurunath Rau Dessai, translator for French and Portuguese languages.

2) Shri V. N. Bhonsle, Superintendent (F. D.) to substitute Shri Gopinath Gude, translator for Indian languages.

K. B. Lall, Deputy Secretary, General Administration Department.

Panjim, 12th November, 1965.

General Administration Department

Civil Administration Services

Notification

The following persons are appointed, under proposal of the Administration of Bicholim Taluka, to constitute the Managing Board of the Devasthan Xri Xernavim e Vetel Salgãoocar, of Advolpale, for a period of three years from 1st April 1965 to 31st March 1968:

President: Xantarama Loximona Dondo Salgãoocar.
Substitute: Ganaxama Quevova Dondo Salgãoocar.
Treasurer: Visnu Ramacrisna Naique Salgãoocar.
Substitute: Vamona Dondo Sinai Salgãoocar.
Attorney: Pracaxa Sricrisna Porobo Salgãoocar.
Substitute: Dondú Babuló Salgãoocar.
Clerk: Ladu Buti Salgãoocar.
Substitute: Esvonta Naraina Dondo Salgãoocar.

Directorate of Civil Administration Services, of Goa, 18th November, 1965. — The Director, S. S. Tinaikar.

Revenue Department

Land Acquisition Act, 1894 (Act I of 1894)

No. RD/LQN/263/65 — Whereas it appears to the Government of Goa, Daman and Diu (hereinafter referred to as «the Government») that the land specified in the schedule hereto (hereinafter referred to as the «said land») is needed for public purpose viz. for construction of a Jetty.

It is hereby notified under the provisions of section 4 of the Land Acquisition Act, 1894 (Act I of 1894) that the said land is needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyors or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, lease, mortgage, assignment, exchange, or any outlay or improvements made therein without the sanction of the Collector after the date of this Notification, will, under section 24 (seventh) of the said Act, be disregarded by the officer assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a final notification to that effect under section 6 of the said Act will be published in the Government Gazette, in the due course. If the acquisition is abandoned wholly or in part, the fact will be duly notified in the Government Gazette.

4. The Government is further pleased to direct under sub-section (4) of section 17 of the said Act that as the acquisition of the said land is urgently necessary, the provisions of section 5A, of the said Act shall not apply in respect of the said land.

The Government is also pleased to authorise under sub-section (2) of section 4 of the said Act, the following officers to do the acts, specified therein in respect of the said land.

1. The Collector of Goa.
2. The Director of P. W. D., Goa, Daman and Diu.

1) O Sr. Gajanana Gantcar, do Arquivo Histórico de Pangim, substituirá o Sr. Gurunath Rau Dessai, tradutor das línguas francesa e portuguesa.

2) O Sr. V. N. Bhonsle, superintendente (Departamento das Finanças) substituirá o Sr. Gopinath Gude, tradutor das línguas indianas.

K. B. Lall, Secretário adjunto do Departamento da Administração Geral.

Pangim, 12 de Novembro de 1965.

Departamento da Administração Geral

Serviços de Administração Civil

Despacho

São nomeados, sob proposta da Administração do concelho de Bicholim, os indivíduos infra mencionados para constituírem a Comissão Administrativa da Devalaia de Xri Xernavim e Vetel Salgãoocar, de Advolpale, para o triénio de 1 de Abril de 1965 a 31 de Março de 1968:

Presidente efectivo: Xantarama Loximona Dondo Salgãoocar.
Presidente suplente: Ganaxama Quevova Dondo Salgãoocar.
Tesoureiro efectivo: Visnu Ramacrisna Naique Salgãoocar.
Tesoureiro suplente: Vamona Dondo Sinai Salgãoocar.
Procurador efectivo: Pracaxa Sricrisna Porobo Salgãoocar.
Procurador suplente: Dondú Babuló Salgãoocar.
Escrivão efectivo: Ladú Buti Salgãoocar.
Escrivão suplente: Esvonta Naraina Dondo Salgãoocar.

Direcção dos Serviços de Administração Civil, em Goa, 18 de Novembro de 1965. — O Director, S. S. Tinaikar.

«Revenue Department»

«Land Acquisition Act, 1894 (Act I of 1894)»

N.º RD/LQN/263/65 — Considerando que o Governo de Goa, Daman e Diu (referido daqui em diante como «Governo») acha que o terreno especificado no quadro anexo (referido daqui em diante como «aludido terreno») é de utilidade pública para os fins da construção dum cais;

Torna-se público ao abrigo do disposto no artigo 4.º do «Land Acquisition Act, 1894 (Act I of 1894)» que o aludido terreno é necessário para os fins públicos acima referidos.

2. Os interessados no aludido terreno são por este avisados a não impedir ou interferir com os agrimensores e outro pessoal em serviço no aludido terreno, para os fins da aquisição do mesmo. Quaisquer contratos para alienação do aludido terreno, por meio de venda, arrendamento, hipoteca, cêndia, troca ou de qualquer outra forma, ou quaisquer projectos ou melhoramentos feitos no mesmo, sem autorização do Collector, depois da data deste aviso, não serão tomados em consideração, ao abrigo do artigo 24.º (sétimo) do referido Act, pelos funcionários encarregados de atribuir compensação pelas partes do aludido terreno que venham a ser finalmente adquiridas.

3. Caso o Governo considere que o aludido terreno é necessário para os fins acima referidos, será publicado oportunamente no *Boletim Oficial*, um aviso final para esse efeito, ao abrigo do artigo 6.º do referido Act. Se a aquisição for abandonada, total ou parcialmente, o facto será notificado no *Boletim Oficial*, na devida altura.

1. O Governo mais determina ao abrigo da alínea (4) do artigo 17.º do referido Act que, como a aquisição do aludido terreno é de urgente necessidade, o disposto no artigo 5A do mesmo Act não terá aplicação em relação ao dito terreno.

O Governo também autoriza, ao abrigo da alínea (2) do artigo 4.º do referido Act, as seguintes entidades oficiais a exercem as funções especificadas na mesma lei em relação ao aludido terreno.

1. Collector de Goa.
2. Director das Obras Públicas de Goa, Daman e Diu.

SCHEDULE

Taluka	Village	Description of the said land	Approximate area
Mapuçá	Ecoxim	Land locally known as «Sexto lote do Palmar» registered at the Conservatoria de Registo Predial of Bardez under no. 5688 a Folhas no. 284 de B antigo no. 58 and registered in the Fazenda of Bardez under nos. 1204 and 1251.	28 sq. mts.

By order and in the name of the Administrator of the Union Territory of Goa, Daman and Diu.

Sripad Anant Nadkarni, Secretary (Revenue).

Panjim, 10th November, 1965.

Land Acquisition Act, 1894 (Act I of 1894)

No. RD/LQN/264/65 — Whereas it appears to the Government of Goa, Daman and Diu (hereinafter referred to as «the Government») that the land specified in the schedule hereto (hereinafter referred to as the «said land») is needed for public purpose viz for construction of Forest Rest House and Staff quarters.

It is hereby notified under the provisions of section 4 of the Land Acquisition Act, 1894 (Act I of 1894) that the said land is needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyors or other persons employed upon the said land for the purpose of the said acquisition. Any contracts for the disposal of the said land by sale, lease, mortgage, assignment, exchange, or otherwise, or any outlay or improvements made therein without the sanction of the Collector after the date of this notification, will, under section 24 (seventh) of the said Act, be disregarded by the officer assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under section 6 of the said Act will be published in the Government Gazette, in due course. If the acquisition is abandoned wholly or in part, the fact will be duly notified in the Government Gazette.

4. The Government is further pleased to direct under Sub-Section (4) of Section 17 of the said Act that as the acquisition of the said land is urgently necessary, the provisions of Section 5A, of the said Act shall not apply in respect of the said land.

5. The Government is also pleased to authorise under Sub-section (2) of Section 4 of the said Act, the following officers to do the acts, specified therein in respect of the said land:

1. The Collector of Goa.
2. The Conservator of Forest, Goa.

SCHEDULE

Taluka	Village	Description of the said land	Approximate area
Quepem	Quepem	Land locally known as «Assonsetavorli Mordis» bounded on the north, east and south by the lands, believed to be belonging to Shri Vishvanath R. S. Shirvaikar and others and on the west by the Quepem-Sanvordem road.	10000 sq. mts.

By order and in the name of the Administrator of the Union Territory of Goa, Daman and Diu.

Sripad Anant Nadkarni, Secretary (Revenue).

Panjim, 11th November, 1965.

QUADRO

Concelho	Aldeia	Descrição do aludido terreno	Área aproximada
Mapuçá	Ecoxim	Terreno denominado, localmente, «Sexto lote do Palmar» registado na Conservatória do Registo Predial de Bardez sob o n.º 5688 a folhas n.º 284 de B antigo n.º 58 e registado na Fazenda de Bardez sob os n.ºs 1204 e 1251.	28 m²

Por ordem e em nome do Administrador do território da União de Goa, Damão e Diu.

Sripad Anant Nadkarni, Secretary (Revenue).

Pangim, 10 de Novembro de 1965.

«Land Acquisition Act, 1894 (Act I of 1894)»

N.º RD/LQN/264/65 — Considerando que o Governo de Goa, Damão e Diu (referido daqui em diante como «Governo») acha que o terreno especificado no quadro anexo (referido daqui em diante como «aludido terreno») é de utilidade pública para os fins da construção dum «rest house» e residências para o pessoal da Repartição das Matas;

Torna-se público, ao abrigo do disposto no artigo 4.º do «Land Acquisition Act, 1894 (Act I of 1894)», que o aludido terreno é necessário para os fins públicos acima referidos.

2. Os interessados no aludido terreno são por este avisados a não impedir ou interferir com os agrimensores e outro pessoal em serviço no aludido terreno, para os fins da aquisição do mesmo. Quaisquer contratos para alienação do aludido terreno, por meio de venda, arrendamento, hipoteca, cédência, troca ou de qualquer outra forma, ou quaisquer projectos ou melhoramentos feitos no mesmo, sem autorização do Collector, depois da data deste aviso, não serão tomados em consideração, ao abrigo do artigo 24.º (sétimo) do referido Act, pelos funcionários encarregados de atribuir compensação pelas partes do aludido terreno que venham a ser finalmente adquiridas.

3. Caso o Governo considere que o aludido terreno é necessário para os fins acima referidos, será publicado, oportunamente, no *Boletim Oficial*, um aviso final para esse efeito, ao abrigo do artigo 6.º do referido Act. Se a aquisição for abandonada, total ou parcialmente, o facto será notificado no *Boletim Oficial*, na devida altura.

4. O Governo mais determina ao abrigo da alínea (4) do artigo 17.º do referido Act que, como a aquisição do aludido terreno é de urgente necessidade, o disposto no artigo 5A do mesmo Act não terá aplicação em relação ao dito terreno.

5. O Governo também autoriza, ao abrigo da alínea (2) do artigo 4.º do referido Act, as seguintes entidades oficiais a exercerem as funções especificadas na mesma lei, em relação ao aludido terreno:

1. Collector de Goa.
2. Conservador das Matas de Goa.

QUADRO

Concelho	Aldeia	Descrição do aludido terreno	Área aproximada
Quepém	Quepém	Terreno denominado, localmente, «Assonsetavorli Mordis», confrontado de norte, nascente e sul pelos terrenos que se supõe pertencer ao Sr. Vishvanath R. S. Shirvaikar e outros e de poente pela estrada Quepém-Sanvordem.	10000 m²

Por ordem e em nome do Administrador do território da União de Goa, Damão e Diu.

Sripad Anant Nadkarni, Secretary (Revenue).

Pangim, 11 de Novembro de 1965.

Finance Department

Notification

FD/F.III/2-35/2165/A/65

In exercise of the powers conferred by section 3 of the Goa, Daman and Diu Excise Duty Act, 1964, the Government hereby appoints all police officers not below the rank of head constables in the Daman and Diu areas, as excise officers for the purposes of section 27 of the Act.

By order and in the name of the Administrator of the Union Territory of Goa, Daman and Diu.

N. Subramanian, Finance Secretary.
Panjim, 3rd November, 1965.

Departamento das Finanças

Portaria

FD/F.III/2-35/2165/A/65

No uso das faculdades conferidas pelo artigo 3.º do «Goa, Daman and Diu Excise Duty Act, 1964», o Governo designa todos os oficiais da polícia de categoria não inferior a «head constables», nas áreas de Damão e Diu, como «excise officers» para os fins do artigo 27.º do citado Act.

For ordem e em nome do Administrador do território da União de Goa, Damão e Diu.

N. Subramanian, Secretário das Finanças.
Panjim, 3 de Novembro de 1965.

Industries and Labour Department

Order

LC/1/65/3378

The following Award given by the Industrial Tribunal on the Industrial Dispute between Messrs. V. M. Salgaokar & Irmão Ltda., Vasco da Gama, and the workmen employed at the Head Office referred to it vide Government Order, Industries & Labour Department no. LC/1/65/1840, dated the 28th June 1965, is hereby published as required vide the provisions of Section 17 of the Industrial Disputes Act, 1947:—

Before Shri S. Taki Bilgrami, Presiding Officer of Industrial Tribunal, Goa, Daman and Diu

Reference (IT-GDD) No. 2 of 1965

Messrs. V. M. Salgaokar e Irmão Ltda., Vasco da Gama
and

The workmen employed at the Head Office

In the matter of reinstatement of Shri Jose Rosario Gomes with full back wages.

Appearances: Shri L. A. Correia, Administration Manager, assisted by Messrs. L. Ferrao, P. K. Lele, and Abdul Kadar, Labour Officers for the company.

Dr. E. L. Dias, President, Goa Trade & Commercial Workers Union for the workmen at the Head Office.

AWARD

This is a reference by the Government of Goa, Daman and Diu for adjudication of a dispute between Messrs. V. M. Salgaokar e Irmão Ltda., Vasco da Gama and the workmen employed under it. The demand of labour which has given rise to this dispute is for reinstatement of Shri Jose Rosario Gomes, with full back wages. According to the Union Shri Gomes was taken as a probationer on 1st April 1964 for 3 months. His period expired on 30 June 1964. Thereafter on 15th August, three months extension was given from 2nd July 1964. There was thus a gap of a few days between the expiry of the period of first probation and the commencement of the second Shri Gomes it is said received no communication at the end of the expiry of 3 months period and continued to work as a probationer thereafter till 25th November 1964. On that day, he was informed by the Administrative Officer, Shri Correia, that though his work was satisfactory, the management had decided to terminate his services. He was advised to tender his resignation and to apply for one month's salary as ex-gratia payment. Shri Gomes refused to do this and his services were terminated on 26th November 1964. The Union submits that the action of the company in terminating the service of Shri Gomes without assigning any reason, without serving on him any charge sheet, and making any inquiry is illegal and improper. The workman is a double graduate and a highly qualified person who has discharged his duties efficiently and conscientiously, and has committed no misconduct. Clause (4) of the letter of appointment, which empowers the company to terminate the services during the period of probationership does not apply, because the period of contract was over.

2. In reply the company raises the objection that this Tribunal has no jurisdiction, because this is not an industrial dispute, but an individual dispute. In regard to the merits it says that it cannot be assumed that Shri Gomes was made permanent, because he worked without extension after the expiry of the period of probationership. According to the company, clause (4) continued to be applicable in spite of the expiry of the original period of probationership, for it should be presumed that he is continued as a probationer subject to all the conditions under which his original appointment was made. The company further submits, that this being a simple termination of service under the terms of contract, the question of serving the worker with a charge sheet and making an inquiry does not arise. That it in fact intended to terminate the service of Gomes when his term expired on 2nd October but the action was delayed because the company was preoccupied with other matters like dealing with the strike, which occurred about that period. For the termination of the services of a probationer, it says, it is unnecessary to assign any reason, the action of the company therefore cannot be questioned before the Tribunal.

3. I have summarised above what I consider as relevant portion of the parties statements. A great deal has been said by both the parties which it is unnecessary to relate.

4. I shall decide the preliminary objection first. Shri Correia on behalf of the company submits, that the dispute for reinstatement of an individual workman in order to become an industrial dispute, entertainable by a Tribunal, should be supported by a substantial number of workers of the same employer, who are interested in the dispute. It must further be proved that other workmen who are members of the Union, are actually supporting the worker in raising the dispute. In the present case he says the Union has not proved that a substantial number of workers of this company were members, as that they are supporting the dispute. In the absence of such proof the dispute cannot be considered an industrial dispute. In reply Dr. Dias says, that the fact that the Union has enough membership of workers of this company is clear from the finding of the Labour Commissioner referred to in the Award of this Tribunal in the previous reference (IT-GDD) No. 1 of 1965, Government Gazette of Goa, Daman and Diu, No. 9, Series II, dated 27th May, 1965 p. 58, between Messrs. V. M. Salgaokar e Irmão Ltda., Vasco da Gama and the workmen employed under it. Dr. Dias admits that no resolution was passed in a General Body Meeting for raising this dispute. It is not the practice of the Union, he says, to consult all the workers for every action it takes. The Union exercises its discretion in the matter of raising disputes on behalf of individual workers, after examining the facts. No meetings are held or votes taken. The action taken by the Union is presumed to be tacitly supported by the member workers. Shri Correia places reliance on a decision of the Mysore High Court in P. M. Murugappa Mudaliar, Ratina Mudaliar Sons vs. P. Raju Mudaliar and Ors., reported in Law Reports Vol. I, Part 1, 4th January 1965, p. 21. In this case the Mysore High Court relying on the decisions of the Supreme Court in Newspapers Ltd., vs. State Industrial Tribunal U. P. and Ors., A. I. R. 1957 S. C. 532; Workmen of Dimakuchi Tea Estate vs. Management of Dimakuchi Tea Estate, A. I. R. 1958 S. C. 363 and Bombay Union of Journalists and Ors vs. The Hindu, Bombay & Anr., A. I. R. 1963 S. C. 318, has held that unless workmen as a body or a considerable section of them make common cause with the individual who has raised the dispute and support it, the Industrial Tribunal has no jurisdiction to entertain it. I think in the present case the requirements needed for making an individual dispute an industrial dispute are fulfilled. The dis-

pute has been raised by the Union which has a fair number of workers as its members. This was decided in Messrs. V. M. Salgaokar e Irmão Ltd., Vasco da Gama and the workmen employed under it, Government Gazette of Goa, Daman and Diu, no. 9, Series II, dated 27-5-1965 p. 58, a case inter partes.

It was also held in that case that it was not necessary that the majority of the workers should support the dispute. The number of workmen who are members of this Union, it was held, are sufficient to entitle this Union to raise a dispute on behalf of the individual workman. Shri Correia distinguishes this case on the ground that in this case no resolution was passed at the General Meeting to support the dispute whereas it was passed in the case above cited. He contends further that workmen supporting the dispute must be interested in it, and relies on the case of the Bombay Union of Journalists & Ors. vs. The Hindu, Bombay, & Anr., A. I. R. 1963 S. C. 318. It was held in that case that the workers who support the dispute should be the workers who have interest in the dispute, and it is not enough if the general Union which has no membership of the workers in this particular company to which the person raising the dispute belongs, raises the dispute. In the present case the question does not arise. The Union is not a general Union but one which has membership of the workers of this concern. When it is said that workers should be interested in the dispute, it does not mean that everyone of the members should be personally affected, by the reinstatement or compensation claimed. Other workers cannot possibly be interested in this narrow sense in the reinstatement or compensation being paid to any individual worker. What is meant is, that other workers should also belong to the same concern who will be presumed to be interested in their co-worker enjoying security of service, so that no one's services are terminated without cause or reason. I do not think also that it is necessary, in the case of a dispute raised on behalf of any individual worker, to prove that a general body meeting was held, and that a resolution was passed to support the action of the Union. The Union is a representative body and after examining each individual's case it takes appropriate action. It represents the workers and the workers will be assumed to support the action. It will be wrong to insist in every instance when such a representative body acts on their behalf, that it should prove that its action is actually supported by the votes and resolution of the workers. I think this objection has no force and is over-ruled.

5. I shall now proceed to consider the merits of the case. There can be no doubt that the continuance of a probationer in service after the original period for which the appointment was made had expired, does not necessarily indicate that the worker has been made permanent, or that his services have been confirmed, and the period of his probation was over. The presumption will be that he continues to be a probationer. The Calcutta High Court in *Caltex (India) Ltd., and Second Industrial Tribunal, West Bengal & Ors.* 1963 I. L. L. J. 156, has held that a probationer does not automatically attain permanency on the expiry of his period of probation. There is also a decision of the Kerala High Court in *Premajam and University of Kerala & Ors.* 1965 I. L. L. J. p. 77.

6. The next question that arises for decision is whether the company is justified, without assigning any reason, or making any inquiry in terminating the services of a probationer, regardless of the fact whether there is any clause in the terms of appointment empowering it to do so. The company relies on the fact, that the terms of the original appointment had continued to apply though the period was not extended. It is argued that it will be assumed that the period of probation was tacitly extended till it was terminated by the company. I think it is unnecessary to decide the point in the present case. There can be no doubt that the continuity of service after the expiry of the original period would be in the case of this worker as that of a probationer and a probationer's service if not wanted can always be dispensed with, without making any inquiry or assigning a cause, even if there is a clause in the contract of service empowering the employer to do so. There is no proof in this case that the company was actuated by any mala fides or any improper motive like victimization. It cannot be said also that the company's action is perverse. A probationer has no right to be confirmed in the post, and the employer is not liable to give any reason as to why he does not confirm him. If the company acts in good faith and no circumstances exist by which any mala fides can be inferred or ascribed to the action of the company, it cannot be questioned before the Tribunal. The case of *Caltex (India) Ltd. of the Calcutta High Court* referred to above can be taken as an authority on this point. It is unnecessary to cite other decisions. The question admits of little doubt. Even in the case of permanent workers, a case of discharge simpliciter can only be interfered with on very limited grounds. I think in the present case there is no

justification for interfering with the action of the company. The demand in the reference is therefore rejected.

S. TAKI BILGRAMI
Industrial Tribunal

Panjim, 9th October, 1965.

By order and in the name of the Administrator of Goa, Daman and Diu.

B. K. Chougule, Secretary, Industries and Labour Department.

Panjim, 10th November, 1965.

Order

LC/1/65/3380

The following Award given by the Industrial Tribunal on the Industrial Dispute between Messrs. The Goa Transport Limited, Margao, Goa and the workmen employed under them referred to it vide Government Order, Industries & Labour Department no. LC/1/65/2375, dated 6th August 1965, is hereby published as required vide the provisions of Section 17 of the Industrial Disputes Act, 1947:—

Before Shri S. Taki Bilgrami, Presiding Officer of Industrial Tribunal, Goa, Daman and Diu

Reference (IT-GDI) No. 3 of 1965

Messrs. The Goa Transport Limited, Margao, Goa
and

The workmen employed under them.

In the matter of reinstatement of Shri Sudhakar Vithal Rege with continuity of service and full back wages.

Appearances: Shri Bernard F. D'Souza, Labour Adviser and Vice President of Goa Press Owners Association for the Company.

Shri Shivram Asgaokar, General Secretary, Transport Employees Union for the workmen.

AWARD

This is a reference under sub-section (5) of section 12 of the Industrial Disputes Act, 1947, by the Government of Goa, Daman and Diu for adjudication of a dispute between the Goa Transport Ltd., Margao, Goa and the workmen employed under it over the reinstatement of Shri Sudhakar Vithal Rege who was dismissed from service on 13th April 1965. According to the Union, the order of dismissal was improper and illegal, because it was made, without any inquiry or investigation, without serving the worker with a charge sheet, or giving him an opportunity to defend himself. The reason for his dismissal was that he left the bus which he was driving unattended at Londa, because of the alleged break-down, and proceeded to Belgaum, from where he returned after 2 days. According to the Union on 12th April 1965 when Shri Rege was driving the bus back from Hubli its brakes failed near Londa, and he found that it was dangerous to drive it back to Goa over the steep ghats, he therefore decided to take it to a place two miles away for repairs. He sent the conductor to the head office to report the break-down, and fetch the mechanic. In the meanwhile he had to stay on. He brought the mechanic from Belgaum who repaired the bus, and he was able to drive it back to Margao. The bus was not damaged nor were any of its parts stolen by its being left at Londa. Shri Rege committed no misconduct, and caused no inconvenience voluntarily to the passengers, and no damage to the company. His dismissal was therefore unjustified and illegal.

2. The company in its reply says, that on 11th April 1965 Shri Rege was driving the bus back from Hubli. When he was near Anmode, its brakes failed as a result of leakage in the oil pipe. Shri Rege left the bus unattended and unguarded for 3 days at Londa, and proceeded to Belgaum. All that the bus needed was some minor repairs. Shri Rege was not justified in leaving it there, and going away to another place. The action of Shri Rege caused damage to the company. His previous conduct was also not good. In November 1963 he was dismissed, and taken back in service on his giving an apology and undertaking to behave himself in future.

3. Admittedly no enquiry was made in the presence of the worker, and no charge sheet was given. I made an enquiry and recorded the evidence of both the parties. Supreme Court has held in the case of *Punjab National Bank*, 1959 II. L. L. J. 666, that if no inquiry is held, it is the duty of

the Tribunal to make an inquiry, and to find out how far the charge levelled against the workman is proved.

4. I satisfied myself that the charge against him was understood by the worker, on whose behalf the statement of claim has been filed. On behalf of the Company five witnesses were examined. Witness No. 1 is Mrs. Melo-Castro Pereira who was the Secretary at the time of the dismissal. She says that Shri Rege was dismissed for he damaged a car in 1963. Thereafter he entreated her to take him back. He submitted an apology and gave an undertaking that in future he will be careful, and was taken back in service in 1964. Soon after he started giving trouble, and making unfounded complaints. While he was bringing back the bus from Hubli its brakes started giving trouble near Londa, only minor repairs were necessary for putting them right. Shri Rege left the bus unattended at Londa, and went away for 3 days to Belgaum. He sent the conductor to report the matter to the head office. It appeared from inquiries that only minor repairs were required. Rs. 5/- were given to the conductor for repairs, and Rs. 5/- as allowance. She says that Rs. 20/- are generally given to the conductor so that he may be able to make payment in an emergency for repairs.

5. Witness no. 2 is Shri Shah one of the Directors. In all material respects he corroborates the statement of Mrs. Pereira. He says that after the bus broke down, the cleaner came with the pipe to the office, and it was found that the pipe required brazing. The cleaner also stated that the bus was in a condition to be brought down safely to Goa. He says that a loss of Rs. 900/- was sustained by the company on account of Shri Rege's leaving the bus at Londa. Shri Shah says that according to the cleaner Rs. 2/- to Rs. 4/- were required for stopping the leakage and brazing the pipe. He says that the brakes are fluid brakes and not hydraulic.

6. Witness no. 3 is Shri Gangaram Naik the cleaner. He says that while coming back from Hubli when they reached Londa at about 3.10 p. m. he found on the road a bus of this company which had broken down. The driver of the bus was Shri Rege, from whom he made inquiry as to the cause of the break-down. Shri Rege said, that brake pipe had broken and requested him to take the passengers to Margao, and report the matter to the office. He did so.

7. Witness no. 4 is Shri Abdul Kadar Shaik Haroon who was the conductor of the bus which broke-down. He says that they left Hubli at 11 a. m., and reached Londa at 2.30 p. m. At 2.45 p. m. they left Londa, and the brakes started giving trouble at Astorim. Shri Rege said that the oil pipe had broken and it would not be possible to proceed further. The witness found that there was a small leakage. Witness says that he gave Rs. 5/- for the repairs to the driver, and transferred the passengers of the bus to another bus, and accompanied them to Margao. The cleaner Mohan and Shri Rege remained at the place where the bus broke-down. He says that he gave Rs. 10/- as bhatta and Rs. 5/- for repairs.

8. Witness no. 5 is Shri Mohan Gajanand Savant, the cleaner. He says that when the bus broke down he went underneath the bus and found that the brake pipe was broken. He removed the pipe, and told the conductor that it required brazing. The witness took Rs. 5/- from the conductor and he went to Londa to get the pipe repaired. He got the pipe repaired, and bought a break solution tin, and came back to the place where the bus was standing. Shri Rege started the bus and took it to Londa. He says in cross-examination, that after telling him to inform the mechanic and get the bus repaired, he went away to Belgaum saying that he would return in the morning. At about 9 a. m. he says Shri Rege arrived from Belgaum, and told him to go to Margao and bring Rs. 10/- for setting and brazing. He took the pipe to the head office and showed it to the Secretary who gave him Rs. 10/- and asked to bring back the bus. He says that when the bus broke down, he asked Shri Rege whether it would be possible to drive to Margao, but he said that it would be dangerous, and he refused to do so. This witness also says, that Shri Rege was the Union leader.

9. After the company's evidence was completed, Shri Rege took time for producing defence witnesses. Though he had not named him as the witness when the inquiry started, Shri Rege said that he was anxious to produce the mechanic who had repaired the bus. For this purpose, time which he asked for till 12th October was given to him. On that day he said that he would himself bring the mechanic along. His

arrival was awaited till 5 o'clock. No one turned up. It was learnt that at 2 o'clock during the recess the mechanic came and was asked to wait by the stenographer and court-clerk present at that time in Court. He went away and never turned up afterwards. As ample opportunity was given, Shri Rege took no advantage of it, and the witness after coming back disappeared. It was not possible to give further time as the session had come to an end on that day, and the arguments of the parties were heard.

10. As it is the defence of Shri Rege, that the damage done to the pipe was such, that it was not possible or safe, to drive the bus down to Margao, which he says is about 70 miles from the place of the break-down, the burden rested on him. It was argued by Shri Asgaokar for the Union, that the leakage which admittedly started in the pipe made it impossible to operate the brakes. It is not necessary to establish this by the evidence of any mechanical expert. There are ghats between Londa and Margao, and no sensible driver could take the risk of driving all the passengers in the night time over the ghats with defective and uncertain brakes. Shri Rege did according to Shri Asgaokar what was expected from any prudent driver. If any accident had occurred, and lives were lost, he would have been held responsible. It will be wrong to hold that he was guilty of misconduct in refusing to drive the bus when the brake-pipe had broken. The company's action in dismissing him was wrong and arbitrary, and he should be reinstated with full back wages. Shri Asgaokar also pointed out that apart from the defects in the brakes there was no stepney, and the driver could not risk taking all the passengers at night without it, for in case of a tyre-burst the passengers would have been gravely inconvenienced.

11. In my opinion in the absence of any expert opinion, or the opinion of that mechanic who actually repaired the pipe, it cannot be concluded from what has been related by the witnesses, that Shri Rege was justified in abandoning the bus at Londa, and going away to Belgaum for 2 or 3 days. The fact that the pipe was repaired by an ordinary local mechanic in an out-of-the-way place for Rs. 5-50 Ps. shows that the damage to the pipe was not considerable, or such, as could not be easily repaired by the mechanic locally available. There is also difference of opinion as to whether it was possible with care to drive the bus down to Margao or not. Shri Haroon, witness no. 4, says that the condition of the bus was such, after the failure of brakes that it could have been brought to the office at Goa. In any case, the conduct of Shri Rege in leaving the bus and going away to Belgaum was reprehensible. It was his duty to stay on, and get the bus repaired as soon as possible, and to satisfy the employer that immediate repairs were necessary. The fact that he did not do so, gives rise to a suspicion, that the whole story about the bus having become incapable of being driven down to Margao was false and Shri Rege merely wanted to find a pretext to get away to Belgaum, and idle there for 2 or 3 days. It is not to be expected that an irresponsible bus driver like this, would be allowed to continue in service. In spite of being given an opportunity the mechanic was not produced. One witness who was produced in defence was Shri Savondekar, whose statement if anything goes against Shri Rege, and does not support his case. He says that the bus had broken down and was standing, when he heard Shri Rege abuse the management. He told Shri Rege not to do so. He is an ex-director of the company. Shri Rege's conduct prior to this dismissal also appears to have been unsatisfactory. It is not denied that he was dismissed, and it is proved by the statement of the Secretary Mrs. Melo-Castro Pereira and the director Shri Shah, that Shri Rege was guilty of damaging company's property through his negligence, and he also lost the tool kit given in his charge. I am not prepared on the evidence recorded to hold that the dismissal of Shri Rege was unjustified and that he merits being reinstated with compensation. The demand in the reference is therefore rejected.

S. TAKI BILGRAMI
Presiding Officer

Bombay, 20th October, 1965.

By order and in the name of the Administrator, of Goa,
Daman and Diu.

B. K. Chougule, Secretary, Industries and Labour Department.

Panjim, 10th November, 1965.

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